



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

BERALD C. MANN  
ATTORNEY GENERAL

May 8, 1939

Mr. Tom A. Craven  
County Auditor  
McLennan County  
Waco, Texas

Dear Sir:

Opinion No. 0-755

Re: What is the proper distribution to be made of payment of part of a fine in a misdemeanor case?

Your request for an opinion on the above stated question has been received by this office.

Your letter reads in part as follows:

"A misdemeanor case in which is involved the payment of a fine, the cost of the Justice of the Peace, the cost of the Constable and the Attorney's cost, the defendant is unable to pay any of the fine or costs and is committed to jail. After serving a part of the time necessary to settle the accounts, the defendant secures enough money to pay in cash the balance due. What is the proper distribution to make of the amount paid in cash?

"For example: The defendant is fined \$1. and costs. The accumulated fine and costs would be as follows:

"Fine	\$ 1.00
Trial Fee	4.00
Attorney	5.00
Constable	5.50
(Total)	\$15.50
Time served in Jail	7.00
Balance paid in cash	\$ 8.50

What distribution should be made of the \$8.50 paid in cash?"

Article 949 of the Code of Criminal Procedure reads as follows:

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"Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this code, shall forthwith be paid over by the officers collecting the same to the County Treasurer of the proper county after first deducting therefrom the legal fees and commissions for collecting the same."

The Statutes do not specifically provide for such situation as presented in your request, however, this department has recently held that where only a part of the fine and costs are collected, that the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine and that where there is not enough collected to pay all of the costs, the money collected should be pro rated. In such a case, one officer has no priority over another.

Article 1052, Code of Criminal Procedure as amended provides that in counties having a population of more than 20,000 inhabitants the Justice of the Peace shall receive a fee of \$2.50 to be paid by the county, for each criminal action tried and finally disposed of before him.

Article 1054, Code of Criminal Procedure as amended reads in part as follows:

"... and in the Justice Court the trial fee shall be the sum of Four Dollars (\$4)."

In view of the trial fee above provided, being a part of the costs, and by reason that the Justice of the Peace is paid by the county, it is our opinion that the \$8.50 in question should be pro rated on the basis of \$5.00 to the county attorney; \$5.50 to the constable and \$4.00 to the county, which figures approximately sixty-four and a fraction cents on the dollar. The county would get its pro rata part of the payment.

You are respectfully advised that it is the opinion of this department that where a conviction is had in

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the Justice Court and only a part of the costs are collected, that said sum should be pro rated between the officers and the county in the same proportion as to which each would have been entitled to receive therefrom had all costs been collected.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

AW:jm

APPROVED

*Gerald E. Mann*  
ATTORNEY GENERAL OF TEXAS